Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

CARLOS ZENÓN RODRÍGUEZ,
YABUREIBO ZENÓN ENCARNACIÓN,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. An incursion in a denominated danger zone (33 C.F.R. § 334.1470) must be prosecuted under 33 U.S.C. § 3 and not under 18 U.S.C. § 1382 or 33 U.S.C. § 1.

2. A criminal charge for the violation of a danger zone (33 C.F.R. § 334.1470) provides for a mandatory evidentiary hearing under 33 U.S.C. § 3 in order to prove a jurisdictional defense on whether or not the regulation unreasonably interferes with the food fishing industry. The right to raise this defense was denied to the petitioners.

3. Whether the district court erred in finding defendants guilty while the Government could not prove during trial all the elements of the alleged offense, specifically when the Government did not plug the danger zone in a nautical chart as requested by the district court.

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The Opinion of the United States Court of Appeals for the First Circuit is cited as ___ F.3d ___ (1st Cir. 2002) and is reprinted in the appendix at App. 1-15; 16-17. The Judgments from the United States District Court for the District of Puerto Rico are reprinted in the appendix at App. 21-31.

JURISDICTION

This is a Petition for Writ of Certiorari from a Judgment of the United States Court of Appeals for the First Circuit, which affirmed two convictions and sentences of the United States District Court for the District of Puerto Rico, for alleged violations committed under 18 U.S.C. § 1382. This Court has jurisdiction to review this case pursuant to 28 U.S.C. § 1258.

STATUTES INVOLVED

18 U.S.C. § 1382

33 U.S.C.§ 1

33 U.S.C. § 3

32 C.F.R. §§ 770.35-40

33 C.F.R. § 165.33 (1989)

33 C.F.R. § 209.200(c)(3)

33 C.F.R. § 334.1470

33 C.F.R. § 334.1480

33 C.F.R. § 334.3(b) (2001)

STATEMENT OF THE CASE

Carlos Zenón Rodríguez and Yabureibo Zenón Encarnación, his son, were arrested by U.S. Marshals and F.B.I. agents in Vieques, Puerto Rico after the Government obtained an indictment from a Grand Jury on one count of trespassing in Camp Garcia Naval Installation, 18 U.S.C. § 1382, a petty offense.

These cases involve several constitutional issues regarding the right of the accused to be notified specifically of the charges against him in order to be allowed to raise a jurisdictional defense. In this case respondents were accused and convicted of a crime they did not commit; an alleged violation of 18 U.S.C. § 1382.

The Principle of Legality and the Rule of Lenity – *Castillo v. U.S.*, 530 U.S. 120 (2000); *U.S. v. Bass*, 404 U.S. 336, 347 (1971) – preempt the district court from convicting petitioners under 18 U.S.C. § 1382 if they allegedly violated a danger zone regulation (33 C.F.R. § 334.1470), promulgated under a different and specific criminal statute (33 U.S.C. § 3). Particularly, when the specific criminal statute (33 U.S.C. § 3) allows a jurisdictional defense not available under 18 U.S.C. § 1382.

The Panel of the Court of Appeals did not follow properly the decisions of that same Circuit in *U.S. v. Saade*, 652 F.2d 1126 (1st Cir. 1981) (*Saade I*) and *U.S. v. Saade*, 800 F.2d 269 (1st Cir. 1986) (*Saade II*). Petitioners were found guilty of violating 18 U.S.C. § 1382 because of

entering a denominated "danger zone" in the ocean, under 33 C.F.R. § 334.1470, a regulation promulgated pursuant to 33 U.S.C. § 3, *Saade I*, at pp. 1131-1132 and not pursuant to 18 U.S.C. § 1382. Therefore, the convictions and sentences under 18 U.S.C. § 1382 should have been reversed by the Court of Appeals.

The Trial:

Carlos Zenón Rodríguez and Yabureibo Zenón Encarnación, his son, were arrested by U.S. Marshals and F.B.I. agents in Vieques, Puerto Rico. An indictment was filed on October 30, 2001. See App. 32-33 Trial in this case was scheduled and conducted on January 15, 2002. Petitioners were found guilty by the U.S. District Court in Puerto Rico for trespassing into Camp García Naval Installation.

After the indictment was filed on October 31, 2001, it was amended on December 2001 and the *Motion to Amend Indictment* was granted on December 10, 2001. See App. 34-35.

On January 3, 2002 respondents-petitioners filed a *Motion To Dismiss Indictment* in which the questions presented before this Supreme Court were argued.

The court ordered the government to file a written response by January 9, 2002. On January 11, 2002 respondents filed a *Second Motion To Dismiss Indictment*. The court notified respondents with an *Opinion and Order* dated January 14, 2002, one day before trial, in which it denied respondents' previous motions without granting respondents the right to a conference status hearing or an evidentiary hearing in order to prove the issues raised in the *Motion to Dismiss Indictment*.

The government's case in chief consisted of 5 witnesses and 9 exhibits. After trial, respondents were found guilty of committing an offense under 18 U.S.C. § 1382 and sentenced to the maximum penalty of 180 days of imprisonment. See Judgments and Sentences, App. 21-31.

The Cases on Appeal:

As soon as respondents obtained the transcript of the proceedings before the District Court, they requested permission to file an Expedited Appeal in the United States Court of Appeals for the First Circuit. This request was granted by *Order* dated March 11, 2002. See Appendix, 20.

After the Court of Appeals received the *Petitioners' Brief*, it reconsidered a previous order and granted as well the request for expedited oral argument by *Order* dated March 14, 2002. App. 19.

The oral argument hearing was held on April 14, 2002. After the Oral Argument, respondents filed an Petitioners' Post Oral Argument Brief, which could have been considered by the Court of Appeals as a Reply Brief of Petitioners. However, the Court of Appeals refused to give any consideration to the document by *Order* dated April 23, 2002. App. 18.

On April 29, 2002 the Court of Appeals confirmed the convictions and sentences of Carlos Zenón Rodríguez and Yabureibo Zenón Encarnación. See Judgment, App. 1-15; 16-17.

Finally, a Petition for Rehearing En Banc was filed on May 9, 2002. Petitioners stressed that the Judgment of April 29, 2002, issued by the Panel in this case, is in conflict with jurisprudence of the United States Supreme

Court and also with previous decisions of the Court of Appeals, raising a "question of exceptional importance" and that a *Rehearing En Banc* by the full court was necessary in order to maintain the uniformity of the Court of Appeals' decisions, according to Rule 35 of the Federal Rules of Appellate Procedure.

Petitioners argued extensively that the Panel of the Court of Appeals did not follow properly the decisions of that same Circuit in *U.S. v. Saade*, 652 F.2d 1126 (1st Cir. 1981) (*Saade I*) and *U.S. v. Saade*, 800 F.2d 269 (1st Cir. 1986) (*Saade II*). Petitioners were found guilty of violating 18 U.S.C. § 1382 because of entering a denominated "danger zone" in the ocean, under 33 C.F.R. § 334.1470, a regulation promulgated pursuant to 33 U.S.C. § 3, *Saade I*, at pp. 1131-1132 and not pursuant to 18 U.S.C. § 1382.

However, the Petition for Rehearing en Banc was denied by *Order* dated May 24, 2002. App. 36-37.

ARGUMENT

The Judgment of April 29, 2002, issued by the Panel of the Court of Appeals for the First Circuit in this case, is in conflict with jurisprudence of the United States Supreme Court and also with previous decisions of the Court of Appeals for the First Circuit.

The Principle of Legality and the Rule of Lenity – *Castillo v. U.S.*, 530 U.S. 120 (2000); *U.S. v. Bass*, 404 U.S. 336, 347 (1971) – preempt the district court from convicting petitioners under 18 U.S.C. § 1382 if they allegedly violated a danger zone regulation (33 C.F.R. § 334.1470), promulgated under a different and specific criminal statute (33 U.S.C. § 3).

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Particularly, when the specific criminal statute (33 U.S.C. § 3) allows a jurisdictional defense not available under 18 U.S.C. § 1382.

The Panel of the U.S. Court of Appeals for the First Circuit did not follow properly the decisions of that same Circuit in *U.S. v. Saade*, 652 F.2d 1126 (1st Cir. 1981) (*Saade I*) and *U.S. v. Saade*, 800 F.2d 269 (1st Cir. 1986) (*Saade II*). Petitioners were found guilty of violating 18 U.S.C. § 1382 because of entering a denominated "danger zone" in the ocean, under 33 C.F.R. § 334.1470, a regulation promulgated pursuant to 33 U.S.C. § 3, *Saade I*, at pp. 1131-1132 and not pursuant to 18 U.S.C. § 1382.

1. An incursion in the danger zone (33 C.F.R. § 334.1470) must be prosecuted under 33 U.S.C. § 3 and not under 18 U.S.C. § 1382:

The principle of legality and rule of lenity – *Castillo v. U.S.*, 530 U.S. 120 (2000); *U.S. v. Bass*, 404 U.S. 336, 347 (1971) – require the courts to take the statute (18 U.S.C. § 1382) and its implementing regulations at their words, and not convict petitioners for entering naval installations or property of the United States if they were allegedly in a danger zone (33 C.F.R. § 334.1470) which was promulgated under a different and specific criminal statute (33 U.S.C. § 3). Particularly, when the specific criminal statute (33 U.S.C. § 3) allows a jurisdictional defense not available under 18 U.S.C. § 1382.

As this court stated in *Saade I*, at p. 1132:

> "the elementary principle of statutory construction applicable is that a court confronted with competing statutory provisions, ordinarily should followed the dictates of the provision more specifically applicable to the problem at hand."

Citing *Busic v. U.S.*, 446 U.S. 398 (1980) and *Morton v. Mancari*, 417 U.S. 535 (1974). See also *Castillo v. U.S.*, 530 U.S. 120 (2000); *Rutledge v. U.S.*, 517 U.S. 292 (1996); *Ball v. U.S.*, 470 U.S. 856 (1985) (Congress ordinarily does not intend to punish the same offense under two different statutes); *U.S. v. Batchelder*, 442 U.S. 114, 125 (1979) (Selectivity in the enforcement of criminal laws is, of course, subject to constitutional constraints).

According to *Saade I*, at pp. 1131-1132, 33 U.S.C. § 3 is the only source of authority designed for target practices and danger zones like 33 C.F.R. § 334.1470, and it has a specific criminal provision. However, 33 U.S.C. § 3 was not included in the *Indictment* in this case, even though it is the specific statute that provides to penalize the alleged violation of a danger zone while target practices are going on, rather than 18 U.S.C. § 1382. The enabling statute, 33 U.S.C. § 3, provides for the following criminal consequences:

> "[E]very person who . . . shall willfully violate any regulations made . . . pursuant to this section shall be deemed guilty of a misdemeanor and . . . shall be punished by a fine not exceeding $500, or by imprisonment . . . not exceeding six months. . . . "

33 U.S.C. § 3 is the statute that provides for the definition of the criminal conduct and penalties in case of a violation to the danger zone defined in 33 C.F.R. § 334.1470. If respondents in *Saade I*, at p. 1132, note 5, could not be charged under 33 U.S.C. § 1, as it was resolved, because "it was not the authority source for this danger zone", petitioners in this case could have never been charged under 18 U.S.C. § 1382 because of the same reason. In order to prosecute petitioners in this case for a

violation of 18 U.S.C. § 1382, the government had the burden to prove that a general statute like 18 U.S.C. § 1382 is the source of authority for the danger zone at issue (33 C.F.R. § 334.1470). This was not done by the government. See *Saade I*, note 5; See also *U.S. v. La Porta*, 46 F.3d 152, 156 (2d Cir. 1994) (prosecution under general provision of statute is improper because another section of the same statute provides the penalty for the specific crime committed; the specific statute must logically preempt the general one, for otherwise the specific one would be rendered superfluous; such a construction would rob it of all practical effect, surely not the Congressional intent.)

To so interpret 18 U.S.C. § 1382 and 33 C.F.R. § 334.1470 would be a judicial *fiat*; to create a criminal conduct by analogy and it is not permitted under the rule of law, principle of legality and specificity. See *Saade I, II.*

It is well settled that the *Sixth Amendment* entitles an accused to be informed of the nature and cause of the accusation against him. *Rosen v. U.S.*, 161 U.S. 29 (1896); *U.S. v. Mills*, 32 U.S. 138 (1833); *U.S. v. Cook*, 84 U.S. 168 (1872); *Russell v. U.S.*, 369 U.S. 749 (1962); citing *Cole v. Arkansas*, 333 U.S. 196 (1948) (Due process violated where the state appellate court affirmed the conviction of respondents charged and tried for one offense on the ground that the evidence established their commission of another offense, which was separate, distinct and substantially different.)

The United States Supreme Court has expressed in few cases, referring to the *Sixth Amendment* and the right of the accused to be informed of the nature and cause of the accusation that:

> " . . . The object of the indictment is, first, to furnished the accused with such a description of the charge against him as will enable him to make his defense . . . ".

M.S. Rhodes, *Orfield's Criminal Procedure Under The Federal Rules*, Vol. I, second edition, pp. 471, 473 (1985). See also the expressions of Justice Harlan in 1906 when he stated that:

> " . . . if the averments of the indictment are sufficient to enable the defendant to prepare his defense . . . the constitutional requirement is met." Rhodes, Op. Cit. 473.

Moreover, in *Cole v. Arkansas*, 333 U.S. 196, 201, 202 (1948), the Supreme Court held a violation of the Fourteenth Amendment (a violation of the due process of law) ". . . if the defendant is convicted on a charge on which he was never tried. The same would be true if he is convicted upon a charge that was never made." M.S. Rhodes, Op. Cit., p. 479. In that case petitioners were tried and convicted of a violation of section 2 of a State statute. The Supreme Court of Arkansas affirmed their convictions under section 1 of the same statute, which described a different and distinct offense. M.S. Rhodes, Op. Cit., p. 479.

In the instant case, the government deliberately accused petitioners under 18 U.S.C. § 1382 in order to deny them of a jurisdictional legal defense under 33 U.S.C. § 3, where it is clear that the regulation (33 C.F.R. § 334.1470), to be valid, cannot "unreasonably interferes with the food fishing industry." This defense was explicitly recognized by the Court of Appeals for the First Circuit in the *Saades* cases, and this course of action – obstruction to a

statutory defense and prosecution in disregard of legislative will – was precisely and expressly rejected by that court in those cases.

A prosecutor's use of the charging process may violate due process if it penalizes the exercises of constitutional or statutory rights. *Smith v. Meese*, 821 F.2d 1484 (1987); *U.S. v. Carter*, 130 F.3d 1432, 1443 (10th Cir. 1997). The prosecutorial discretion to decide what charges to bring is not beyond judicial review when constitutional or statutory rights are at stake. *Willhauck v. Halpin*, 953 F.2d 689, 711 (1st Cir. 1991); *U.S. v. Adams*, 870 F.2d 1140, 1145 (1989) (Prosecutorial discretion may not be a reaction to defendant's exercise of protected statutory rights); *U.S. v. Mastroniani*, 749 F.2d 900, 911 (1st Cir. 1984) (Prosecutorial discretion limited by requirement not to violate fundamental conceptions of justice).

Moreover, contrary to *U.S. v. Mowat*, 582 F.2d 1194 (1978), where the Secretary of the Navy's instructions advised that a violation of the said instructions could be considered a violation of 18 U.S.C. § 1382, neither the regulation in this case (33 C.F.R. § 334.1470) nor its enabling statute (33 U.S.C. § 3) advise of the application of 18 U.S.C. § 1382 in the event of a violation. The danger zone on the ocean in this case is not part of Camp Garcia or within the meaning of Naval Installations and properties or closed bases covered by 18 U.S.C. § 1382 and 32 C.F.R. §§ 770.35-40.

The Indictment in this case should have included the specific alleged offense under 33 U.S.C. § 3 and 33 C.F.R. § 334.1470 rather than 18 U.S.C. § 1382. For these reasons, petitioners are in prison for a violation they did not

commit and the judgments and sentences in these cases should be reversed.

2) The mandatory evidentiary hearing under 33 U.S.C. § 3:

This is the third time, at least, in which the U.S. District Court for Puerto Rico does not follow the Court of Appeals' mandate to hold an evidentiary hearing on this issue.

This specific controversy was addressed previously in *Saade I*, by Judge Bownes, and reaffirmed in 1986, in *Saade II*, by Judge Breyer. Notwithstanding the rulings of the Court of Appeals, the evidentiary hearing was never conducted by the district court.

In 1981, the Court of Appeals for the First Circuit decided this very same issue stating as follows:

> "The federal court has jurisdiction to try criminal cases only when the Information or Indictment alleges a violation of a valid federal law; and it is ultimately the court's responsibility to ensure that jurisdiction exists." *Saade I*, at p. 1134.

The charges against petitioners are based upon the infringement of a "Danger Zone", 33 C.F.R. § 334.1470, which was promulgated pursuant to 33 U.S.C. § 3, as stated in *Saade I*, at pp. 1131-1132. According to 33 U.S.C. § 3 and *Saade I*, petitioners are entitled to challenge the regulation (33 C.F.R. § 334.1470) if they are able to establish that the regulation "unreasonably interferes with the food fishing industry" (The fishing proviso). If petitioners

succeed in their challenge of the regulation, the indictments shall be dismissed. In order to challenge the regulation, the district court had to hold an evidentiary hearing, something that was not done. See *Saade I*, at p. 1134 and *Saade II*, at p. 273, where this court remanded the cases for purposes of holding the very same evidentiary hearing denied by the courts below in the case at bar. Surprisingly, the Panel of the Court of Appeals decided that *Saade I*, supra, "seems to have been satisfied by the addition of 33 C.F.R. § 334.3(b)". Slip Opinion, p. 15. App. 14. This observation is without merits, failing to take into account that the two regulations (33 C.F.R. § 334.3(b) and 33 C.F.R. § 209.200(c)(3)) are virtually identical in all respects pertinent to the case at bar. 33 C.F.R. § 334.3(b) states as follows:

> " . . . Whenever the proposed establishment of a danger zone or restricted area may affect fishing operations, the District Engineer will consult with the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior . . . "

The previous regulation (33 C.F.R. § 209.200(c)(3)), analyzed in *Saade II*, provided for the same consultation process with the District Engineer:

> "Whenever the establishment of a proposed danger zone . . . may affect fishing operations the District Engineer will consult with the regional director, U.S. Fish and Wildlife Service, Department of the Interior."

33 C.F.R. § 209.200(c)(3) as cited in *Saade II*, p. 270 (1986).

The Panel's conclusion that petitioners' "reliance on *Saade* was misplaced" is without any basis; the Panel ignored the reality that the issue was indeed already

addressed by the same Court of Appeals in 1981 and 1986 as an independent administrative issue to the question of whether or not the danger zone regulation violated the "fishing proviso". See *Saade II*, at pp. 272-273. Indeed, the grounds stated by the Panel constitute additional arguments for petitioners before the district court in order to challenge the regulation (33 C.F.R. § 334.1470) on administrative and procedural grounds, as respondents attempted in *Saade II*, at pp. 270-272. *Saades* cases have not been revoked nor the mandatory evidentiary hearing ordered in these cases have been expressly eliminated or prohibited by Congress or any administrative regulation.

In *Saade*, supra, this court rejected the possibility of deciding the issue at bar based on the consultation process provided in the regulation, without recourse to an evidentiary hearing in order to determine "the substantive lawfulness of the regulation." See *Saade II*, at pp. 272-273, where the Court of Appeals stressed that:

> "The government asked for summary judgment arguing that the 'proviso' issue should be decided on the basis of the administrative record, without recourse to an evidentiary hearing. (This is the same contention of the Panel in this case).... [T]he court apparently accepted the government's argument.... It is plain to us that the district court erred in refusing to hold the evidentiary hearing.... We remanded (in 1981) for that very purpose.... [A]n older and still legal tradition allows a party to wait, challenging the regulation's validity when the agency seeks to enforce the regulation.... We ... reiterate that petitioners may present evidence designed to show that the regulation unreasonably interfered with the food fishing industry." (Parenthesis added).

Moreover, since *Saade I*, at p. 1134, the First Circuit was emphatic in stressing that the legal defense provided by 33 C.F.R. § 334.1470 and 33 U.S.C. § 3 (the fishing proviso), is a jurisdictional defense and that, as such, it might be raised independently from the administrative procedures provided by 33 C.F.R. § 209.200(c)(3), now 33 C.F.R. § 334.3(b) (2001). In 1981 the Court stated:

> "The Government advances several reasons for rejecting the Petitioners' position. First, it contends, without any supportive authority or evidence, that Congress intended that this question be decided only in a civil action. Section 3 is not, however, one part of a unique legislative scheme such as that at issue in *Yakus v. United States*, 321 U.S. 414 (1944). The statute underlying the controversy in *Yakus* created a comprehensive regulatory administration to control prices during World War II. As part of the scheme, Congress provided an exclusive procedure, including review by an emergency court of appeals, by which an aggrieved party could challenge the validity of a price regulation and *expressly prohibited recognition of such a challenge as a defense to a criminal charge for violation of the regulation*. Citations omitted. In the absence of a similarly preclusive legislative scheme applicable to regulations issued pursuant to section 3, we will not foreclose the petitioners' efforts to show that their convictions were premised on a regulation that, because invalid, has no legal effect." See *Saade*, supra, p. 1133, at note 9 (1981).

In the instant case, the consultation process (33 C.F.R. § 334.3(b)) mentioned by the Panel in order to deny the defense is virtually identical to the administrative process contained in the predecessor, 33 C.F.R. § 209.200(c)(3).

Moreover, nowhere does the regulation (33 C.F.R. § 334.3(b)) expressly prohibit the recognition of the challenge at issue as a defense to a criminal charge for violating the danger zone. Even if such express prohibition exists, it could be subject to "a constitutional challenge by a criminal defendant". *Saade I*, note 9. ***Without question, the only way to safeguard the constitutional right of petitioners to raise a valid defense, to due process of law and to have a fair trial, was through the evidentiary hearing***. All these constitutional rights have been violated in this case, in a decision which is thoroughly contradictory to a decision of an earlier panel of the Court of Appeals for the First Circuit.

The Panel also agreed with the district court that "respondents did not properly raise the argument because they provided no legal or factual support for it." Slip. Opinion, p. 15. However, it is precisely the purpose of the evidentiary hearing previously ordered by the First Circuit in the *Saades* cases, to provide such an opportunity to criminal respondents in such circumstances. The *Saade* court at no time set a minimum level of evidentiary showing prior to afford a defendant his/her right to the mandated evidentiary hearing.

Rather than complying with this jurisdictional requirement, the district court simply rejected petitioners' arguments on the unreasonable character of the regulation (33 C.F.R. § 334.1470) in an *Opinion and Order* of 14 January 2002 (the day before trial). When defense counsel requested permission for oral argument on the reconsideration of the *Opinion and Order*, the court denied the petition twice during trial. In what can only be characterized as a hasty decision without basis, the presiding judge

abruptly interrupted defense counsel during the reconsideration request and stated:

> "I am fully aware of the arguments, I have dealt with this for a number of years and I am fully satisfied this is the right result, I am sorry. (Addressing the Government:) Call your witness."

See *Petitioners' Brief*, pp. 26-27; *Transcript*, p. 9, lines 1-11.

See also the *Appendix*, pp. 37-43, *Exhibits* 10 and 11 of *Petitioners' Brief*, wherein the district court even denied petitioners a "pretrial conference" requested pursuant to *Federal Rules of Criminal Procedure*, Rule 17.1 and *Local Rules* 410-411. Nothing in the record of this case justifies the conclusion that petitioners failed to raise the issue properly during trial.

In *Saade I*, at p. 1133, the First Circuit denied the Government's arguments (the same as those accepted by the Panel in this case) concluding that:

> "Although Saade did not question the reasonableness of the regulation in his pretrial motion (petitioners in this case challenged the regulation in their *Motion to Dismiss Indictment*), . . . his silence below does not necessarily preclude a fully explored challenge on appeal. Federal Rule of Criminal Procedure 12(b)(2) mandates that a claim that an information fails to state an offense 'shall be noticed by the court at any time during the pendency of the proceedings.' This language has been interpreted to encompass such defenses even if first raised by a defendant on appeal or by a court of appeals *sua sponte*. See *U.S. v. Meacham*, 626 F.2d 503, 509 (5th Cir 1980); *Government of Virgin Islands v.*

> *Greenidge*, 600 F.2d 437, 439 n. 2 (3rd Cir. 1979); *U.S. v. Seus*, 474 F.2d 385, 387 n. 2 (1st Cir.), cert. denied, 412 U.S. 928. . . . So interpreted, the rule appears to require that we entertain the petitioners' claim that the regulation unreasonably interferes with the food fishing industry." (Parenthesis Added).

In that same case, the Court of Appeals stressed that:

> "Although Saade did not question the regulation's compliance with the fishing proviso before the district court, he did draw the courts attention to the potentially substantial defect in the promulgation of the regulation, the Secretary's misplaced reliance on 33 U.S.C. § 1. (This challenge was also raised in this instant case). Given the Secretary's error, and that a facially apparent major distinction between section 1 and section 3 is the latter's proviso for the food fishing industry, the district court had an obligation to ascertain whether the Secretary had complied with the proviso when issuing the regulation. This obligation arises from the fact that a federal court has jurisdiction to try criminal cases only when the information or indictment alleges a violation of a valid federal law; and it is ultimately the courts responsibility to ensure that jurisdiction exists." (Parenthesis added). *Saade I*, at p. 1134.

The *Saade II* Panel went even further, noting that although petitioners did not challenge the district court's grant of summary judgment in their initial brief:

> " . . . they raised the matter at oral argument. Because we previously ordered the hearing and the failure to hold it resulted from the position that the government took in the court below, we

shall accept petitioners' tardy mention of the point."

Based on these arguments and conclusions, the Court of Appeals remanded the case for further proceedings twice in order to hold an evidentiary hearing. *Saade I, II*.

For all the above grounds, the Panel's Judgment in this case should be reconsidered, and the judgments and sentences of the district court should be reversed or the cases remanded for the evidentiary hearing.

ALLEN and VENTURA-MELENDEZ should be distinguished:

This case has to be distinguished from *U.S. v. Allen*, 924 F.2d 29 (1991). This is not a *security zone* designated to protect *permanently* the boundaries of the Naval installation, and submarines moored to a pier which is part of a naval reservation, but a danger zone in the ocean "open to the public" and designated to give warning to fishermen only when target practices are being conducted.

The "danger zone" in this case cannot be considered as part of a closed base or naval installations and properties under 18 U.S.C. § 1382. The regulation text reads: "It will be open to navigation at all times except when firing is under way"; contrary to *Allen*, supra, where the security zone (33 C.F.R. § 165.33 (1989)) is permanently closed to the public, as it is under 18 U.S.C. § 1382 and 32 C.F.R. §§ 770.35-40.

Moreover, as we stressed previously, *Allen*, supra, was decided by analogy using the case of *Mowat*, supra, were the Secretary of the Navy's instructions, expressly advised petitioners that they could be prosecuted under 18 U.S.C. § 1382 in case of a violation. The enabling statute (33

U.S.C. § 1231) for the regulation in *Allen*, supra, is also different from the enabling statute of the danger zone at issue in this instant case (33 U.S.C. § 3), which includes a jurisdictional defense that was not available to *Mowat* or *Allen*.

The same analysis applies concerning the interpretation of a *restricted area* (33 C.F.R. § 334.1480) in *U.S. v. Ventura-Melendez*, 275 F.3d 9 (1st Cir. 2001), where respondents were arrested while they were on the beach in lands of Camp Garcia. To the contrary, petitioners in this case were found allegedly within a temporary "danger zone" in the ocean that is not part of Camp Garcia. Neither 18 U.S.C. § 1382 nor 32 C.F.R. §§ 770.35-40 defines Camp Garcia as expressly including the so called "danger zone" in the ocean comprehended in 33 U.S.C. § 3 and 33 C.F.R. § 334.1470. To so interpret the concept of "occupation and control" stressed in *Mowat*, supra, violates the principle of legality and the clause of due process of law of the U.S. Constitution.

3. Whether the district court erred in finding respondents guilty while the Government could not prove during trial all the elements of the alleged offense, specifically when the Government did not plug the danger zone in a nautical chart:

Assuming arguendo that 33 C.F.R. § 334.1470 gives an adequate notice or warning of criminal penalties for its violation or failure to vacate the area, the Government had to prove that (a) the danger zone was actually activated; (b) the area covered by the danger zone had to be established with expert testimony concerning the latitudes, longitudes and degrees contained in the regulation; (c) the

Government had to prove that the notification was actually posted in the designated public areas or governmental buildings according to 33 C.F.R. § 334(3)(c) or any other applicable regulation; (d) that respondents intentionally entered the danger zone; (e) that after warning, respondents did not vacate the area.

The first witness called by the Government was Mr. Cesareo Nieves, who testified about the limits and borders of Camp Garcia. He was very categorical when he stressed that the deeds admitted into evidence were about land acquisitions and that Camp Garcia goes up the high tide line. It does not cover the sea. See Trial Transcript, pp. 12-13.

The second witness, Sargento Luis Martínez of the Police of Puerto Rico, testified to be the person in charge of the operation on October 4, 2001. He accepted that from the OP-1, the Navy personnel informed him that the Navy was not going to intervene with the civilian vessels because they did not have jurisdiction, which is consonant with respondents' theory about lack of adequate notification to establish a valid danger zone according to 33 C.F.R. § 334.1470 and 33 C.F.R. § 334(3)(c).

Moreover, he admitted for the record that the Police of Puerto Rico neither had jurisdiction to intervene with respondents' vessels and therefore they left the area. See Transcript, pp. 32, lines 23-25; p. 33, lines 1-6; pp. 30-33.

Sargento Martínez testified that the vessels where about 200 feet from the coast and that he had the opportunity to talk to respondents to inform them that they were in a restricted area and that they had to vacate the area. Martínez testified about a negotiation process between him and Carlos Zenon, about how they were going

to vacate the zone, and that finally respondents left. Martínez testified that when he came back they were not there. See Transcript, pp. 20-23, 42, line 11. Martínez always referred to the danger zone as a restricted area without any distinction between a danger ~~zone~~ and a restricted area, which is extremely important in this case due to the fact that according to the fishermans' warning notice, Exhibit 17 of *Petitioners' Brief*, the closed area for October 4, 2001 was the danger zone and not the restricted areas. (See Trial Transcript, pp. 15, line 6; 17, line 19-25; 20, line 23; 21, line 23; 22, line 10; 32, line 21.)

The other police officer from Puerto Rico is Wilfredo Padilla, who also referred to the danger zone as a restricted area. Transcript, p. 34, line 25; 35, line 10, 18; 37, line 8, 21; 43, lines 7-17. This police officer also admitted that they did not have authority to intervene with respondents. Moreover, during his cross-examination he admitted not to know the area very well. See Transcript, p. 43, lines 7-11.

The fourth witness called by the Government was a Navy officer called Kathleen Cossailt who could not describe the danger zone accurately. She even testified than the danger zone included lands and the ocean around the east side of Vieques. No distinction was made regarding the danger zone and the restricted area; and no reference was made to a maritime or nautic chart to prove that respondents were actually within the so called danger zone as specified in 33 C.F.R. § 334.1470. The Court was clear when it stressed for the record that:

> " . . . I would not give an opinion, I would expect someone to plug this danger zone on a nautical chart. Obviously that has to be done."

See Trial Transcript, p. 44, lines 17-19. This was said by the presiding judge after he previously refused to take judicial notice of the regulation in question, 33 C.F.R. § 334.1470. See Transcript, pp. 17, lines 19-22 and p. 19. No one during trial plugged the danger zone on a nautical chart according to the federal regulation and the judge's instructions.

As we stressed previously, the regulation is very specific regarding the borders of the danger zone:

> "(a) The danger zone. From Punta Conejo on the south coast of Vieques at latitude 18 <<degrees>> 06'30", longitude 65 <<degrees>> 22'23"; thence to latitude 18 <<degrees>> 03'00", longitude 65 <<degrees>> 21'00"; thence to latitude 18 <<degrees>> 03'00", longitude 65 <<degrees>> 15'30"; thence to latitude 18 <<degrees>> 11'30", longitude 65 <<degrees>> 14'30"; thence to latitude 18 <<degrees>> 12'00", longitude 65 <<degrees>> 20'00"; and thence to Cabellos Colorados on the north coast of Vieques at latitude 18 <<degrees>> 09'49", longitude 65 <<degrees>> 23'27"."

This regulation does not mention Salinas Bay as part of the danger zone. Furthermore, while the points of reference in the regulation are "Cabellos Colorados" and "Punta Conejos", this reference was not mentioned at all by any of the witnesses called by the Government. The government neither located what they identified as Salinas Bay within the specific latitudes, longitudes and degrees contained in the regulation.

When the government requested from the Court to take judicial notice of the regulation in issue, the presiding judge refused to take judicial notice of section(a) of the

regulation as cited above and answered: " . . . ***I would not give an opinion, I would expect someone to plug this danger zone on a nautical chart. Obviously that has to be done.***" See Transcript, p. 44, lines 17-19. It is obvious that the government did not fulfill with its burden of proof. See Transcript, pp. 71-72. (Therefore, the Court of Appeals' panel committed a clear and plain error while concluding that the U.S. District Court "took judicial notice of 33 C.F.R. § 334.1470, which outlines the danger zone in question in this case." See App. pg. 10, first paragraph.)

The last witness to be called was Ramon J. De Jesus, a Navy officer with 21 years of experience, who identified the so called danger zone as a restricted area and could not clarify for the record the differences between a danger zone and a restricted area, which was crucial in order to analyze the sufficiency of the September 26, 2001 notification. In that document (Exhibit 17 of *Petitioners' Brief*) the areas closed to the public for October 4, 2001 were the danger areas, not the restricted areas. If the witness, who has been working for the U.S. Navy for 21 years, could not mention the difference between a danger zone and a restricted area in the ocean, it is impossible that the Court expects that the people of Vieques could have a sufficient and clear notice of the sea areas closed to the public. Moreover, when that witness was required to identify the alleged danger zone in the map that was attached to the fishermans' warning notice (Exhibit 17 of *Petitioners' Brief*), he was unable to do it. He had to take a look to a bigger map, a real estate property map of Vieques, to show approximately the zone. See Transcript, p. 58, lines 11-14. This other map does not constitute a nautical chart where the danger zone could be identified as required by the federal regulations. This witness neither identified respondents

within the longitudes, latitudes and degrees contained in 33 C.F.R. § 334.1470 according to a nautical or maritime chart, something that was required by the court in a previous stage of the proceedings when the government requested the court to take judicial notice of 33 C.F.R. § 334.1470. See Transcript, pp. 44, lines 17-19, p. 17, lines 19-22 and p. 19.

Furthermore, this witness could not establish either his personal knowledge about if the fishermans' warning notice was actually posted. He corrected his statement saying: " . . . they are posted at, we send copies to the Port Authority in Fajardo . . . " and so on. See Transcript, pp. 58, lines 23-25, p. 59, lines 1-14.

Therefore, the judgments and sentences of the District Court in this case shall be revoked and petitioners shall be found not guilty of the alleged offense and released from M.D.C. Guaynabo, Puerto Rico, as soon as possible.

Wherefore, petitioners respectfully request that this *Petition for Certiorari* should be granted, the Circuit Court Panel's Judgment of April 29, 2002 and the convictions and sentences should be reversed.

Petitioners have been incarcerated for 180 days, coming out of prison this July 12, 2002, for a violation wherein they have not been able to present a rightful

defense and therefore, the convictions and sentences in this case should be reversed.

Respectfully submitted,

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United States Court of Appeals
For the First Circuit.

Nos. 02-1207, 02-1208

UNITED STATES OF AMERICA,

Appellee,

v.

CARLOS ZENÓN-RODRÍGUEZ,
YABUREIBO ZENÓN-ENCARNACIÓN,

Defendants, Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

[Hon. José Antonio Fusté, *U.S. District Judge*]

Before

Selya, *Circuit Judge*,
Stahl, *Senior Circuit Judge*,
and Lynch, *Circuit Judge*.

Fermín L. Arraiza-Navas with whom *Jose J. Nazario de la Rosa* and *Pedro J. Varela* were on brief for appellants.

Michael F. Hughes, Special Assistant United States Attorney, with whom *Guillermo Gil*, United States Attorney, and *Jorge E. Vega-Pacheco*, Assistant United States Attorney, were on brief for appellee.

April 29, 2002.

LYNCH, *Circuit Judge*. Carlos Zenón-Rodríguez and Yabureibo Zenón-Encarnación appeal their convictions for violating 18 U.S.C. § 1382 by trespassing on a United States Navy Installation on October 4, 2001. The defendants were protesting the military exercises conducted by the U.S. Navy at and around the Camp Garcia Naval Installation at Vieques, Puerto Rico. They were each sentenced to 180 days in prison, the maximum under the statute. We affirm the convictions.

I.

For the purposes of the Zenóns' sufficiency of the evidence claims, we describe the facts in the light most favorable to the verdict. *United States v. Van Horn*, 277 F.3d 48, 54 (1st Cir. 2002).

On October 4, 2001, at approximately 11:30 a.m., Puerto Rico police found Carlos Zenón-Rodríguez and his son Yabureibo Zenón-Encarnación on two separate small boats in the waters of Bahia Salinas del Sur (or South Salinas Bay), about 150-200 feet off Camp Garcia, the U.S. military installation on the island of Vieques, Puerto Rico. The Navy was conducting military exercises on that day and had given prior notice of that fact.

Kathleen Cossairt, a U.S. Navy security liaison, spotted the two civilian vessels earlier that morning from an observation post on Camp Garcia known as O.P. 1. The Rapid Action Force Unit of the Puerto Rico Police Department, "FURA," was contacted and informed that there

were two civilian boats in South Salinas Bay. FURA sent four vessels toward the civilian boats in the bay, which remained about 150-200 feet off shore.

The FURA boats had to chase the Zenóns' boats. When the FURA officers reached the Zenóns, the officers informed them that they were in a "restricted area." The son, Zenón-Encarnación, refused to talk with the officers and told them as much. According to one of the officers, the father, Zenón-Rodríguez, told them, repeatedly, "you are our brothers and we don't want problems with you, but we have to put an end to this."

After a forty-minute negotiation with the officers, at approximately 12:10 p.m., the Zenóns agreed to leave the area, and did leave, but only after the FURA boats left first. Despite the warnings, the Zenóns did not leave the prohibited area for some period after the FURA boats left. By this time, they had disrupted the military exercises for about two hours because the range was considered foul while they were in the bay.

When the FURA officers found the Zenóns in South Salinas Bay, the Zenóns were within the danger zone[1] around Camp Garcia outlined in 33 C.F.R. § 334.1470.[2]

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[1] A danger zone is "[a] defined water area (or areas) used for target practice, bombing, rocket firing or other especially hazardous operations, normally of the armed forces. The danger zones may be closed to the public on a full-time or intermittent basis, as stated in the regulations." 33 C.F.R. § 334.2 (2001).

[2] 33 C.F.R. § 334.1470 reads:

(a) *The danger zone.* From Punta Conejo on the south coast of Vieques at latitude 18°06'30", longitude 65°22'33"; thence to latitude 18°03'00", longitude 65°21'00"; thence to latitude

(Continued on following page)

A regular weekly fishermen's warning notice, which in the normal course is sent to nine locations, was distributed on September 26, 2001, for the week of October 1 to October 7, 2001. The notice is routinely posted in various locations, including the Vieques post office, the Fishermen's Association, the Port Authority, and marinas in the area. It clearly stated that there would be "dangerous naval activities" in "Danger Area B" from 8:00 a.m. until 11:00 p.m. on October 4. The notice, as it normally does, included a map which depicted Vieques and Danger Area B. South Salinas Bay is in Danger Area B.

The Zenóns were charged with illegally entering naval property in violation of 18 U.S.C. § 1382. They filed a motion to dismiss the indictment on January 3, 2002, which the district court denied on January 14. A one-day bench trial was held on January 15, 2002. After the

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18°03'00", longitude 65°15'30"; thence to latitude 18°11'30", longitude 65°14'30"; thence to latitude 18°12'00", longitude 65°20'00"; and thence to Cabellos Colorados on the north coast of Vieques at latitude 18°09'49", longitude 65°23'27".

(b) *Regulations.* (1) It will be open to navigation at all times except when firing is being conducted. At such times, no persons or surface vessels, except those patrolling the area, shall enter or remain within the danger area. Prior to conducting each firing or dropping of ordnance the danger area will be patrolled to insure that no watercraft are within the danger area. Any watercraft in the vicinity will be warned that practice firing is about to take place and advised to vacate the area.

(2) The regulations will be enforced by the Commander, U.S. Naval Forces Caribbean, U.S. Naval Station, Roosevelt Roads, Puerto Rico, and such agencies and subordinate commands as he/she may designate.

33 C.F.R. § 334.1470 (2001).

government rested its case, the Zenóns raised a motion for judgment of acquittal. Fed. R. Crim. P. 29. After hearing argument on the motion, the court denied the motion and found both the Zenóns guilty. The court sentenced each of them to the maximum penalty of 180 days in prison.

Defendants now appeal their convictions. They make four main arguments, which they made previously in their motion to dismiss the indictment and in their Rule 29 motion. First, they argue that the danger zone is not part of Camp Garcia and is not U.S. property, and so they cannot be convicted for trespassing on U.S. naval property under 18 U.S.C. § 1382. Second, they argue that the court erred in not granting their Rule 29 motion, because the government did not prove all the elements of the offense charged. Third, they argue that under 33 C.F.R. § 334.3(c)[3]

[3] 33 C.F.R. § 334.3(c) states:

(c) *Temporary, occasional or intermittent use.* If the use of the water area is desired for a short period of time, not to exceed thirty days in duration, and that planned operations can be conducted safely without imposing unreasonable restrictions on navigation, and without promulgating restricted area regulations in accordance with the regulations in this section, applicants may be informed that formal regulations are not required. Activities of this type shall not reoccur more often than biennially (every other year), unless danger zone/restricted area rules are promulgated under this part. Proper notices for mariners requesting that vessels avoid the area will be issued by the Agency requesting such use of the water area, or if appropriate, by the District Engineer, to all known interested persons. Copies will also be sent to appropriate State agencies, the Commandant, U.S. Coast Guard, Washington, DC 20590, and Director, Defense Mapping Agency, Hydrographic Center, Washington, DC 20390, ATTN: Code NS 12. Notification to all parties and Agencies shall be made at least two weeks prior to the

(Continued on following page)

they were entitled to at least two weeks' advance notice of the military exercise and the prohibition from entering the danger zone on October 4, 2001. Fourth, they argue that the regulation creating the danger zone is invalid because it unreasonably interferes with Puerto Rico's food fishing industry. They say that the district court was obligated to hold an evidentiary hearing on this issue.

II.

A. Whether Incursions into the Danger Zone May Violate 18 U.S.C. § 1382

Defendants' primary argument is a territorial one: they say that the danger zone outlined in 33 C.F.R. § 334.1470 is not part of Camp Garcia and is not U.S. property, and so trespassers there may not be prosecuted under 18 U.S.C. § 1382. Defendants claim that because they were in the waters of South Salinas Bay, which is not owned by the U.S. government, they did not violate 18 U.S.C. § 1382.

Whether prosecutions under 18 U.S.C. § 1382 may include trespassers in the danger zone around Camp Garcia is a question of law, and "[w]e review the district court's construction of a federal statute de novo," *United States v. Maxwell,* 254 F.3d 21, 24 (1st Cir. 2001). The statute, 18 U.S.C. § 1382, in relevant part, prohibits, "within the jurisdiction of the United States," entry "upon any military, naval, or Coast Guard reservation, post, fort,

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planned event, or earlier, if required for distribution of Local Notice to Mariners by the Coast Guard.

33 C.F.R. § 334.3(c) (2001).

arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation." The danger zone regulation itself says that when firing is conducted in the area "no persons or surface vessels . . . shall enter or remain within the danger area." 33 C.F.R. § 334.1470(b).

The defendants' argument is premised on the erroneous notion that the United States must own the portion of the danger zone where the defendants were found in order to prosecute them for trespassing. In *United States v. Ventura-Meléndez,* 275 F.3d 9 (1st Cir. 2001), this court held that "'government ownership of the property in question is *not* a requisite to violating Section 1382.'" *Id.* at 17 (quoting *United States v. Allen,* 924 F.2d 29, 31 (2d Cir. 1991)). Instead, "§ 1382 requires only that the government demonstrate either a possessory interest in, or occupation or control of, the area reserved by the military." *Id. Ventura-Meléndez* also held that § 1382 extends to prosecution of those who enter a danger zone in proximity to a military installation. *Id.* at 17-18.

In this case, the United States demonstrated its occupation and control of South Salinas Bay in two ways. First, the regulation itself, 33 C.F.R. § 334.1470(a), is such a demonstration. It outlines a large area, which extends from the Camp Garcia beach, and designates it as a danger zone. As we discuss later in the opinion, South Salinas Bay is within the danger zone outlined by the coordinates in the regulation. Second, as a matter of fact, the portion of the danger zone that includes South Salinas Bay was under the occupation and control of the U.S. on October 4, 2001. Cossairt, the U.S. Navy security liaison, testified that there were military exercises occurring on that day, and that South Salinas Bay was in the live impact area. The U.S. Navy observes the area to see if

there are intruders and arranges for vessels to apprehend the intruders. Because the U.S. exercised control over the South Salinas Bay area on October 4, 2001, unlawful entry onto that area was prohibited under 18 U.S.C. § 1382.

B. Rule 29 Motion: Elements of 18 U.S.C. § 1382

The Zenóns argue that the court erred in not granting their Rule 29 motion, because the government did not prove all the elements of the offense charged. They say the government presented insufficient evidence to convict them. We review a district court's denial of a Rule 29 motion de novo. *Ventura-Meléndez,* 275 F.3d at 17. The defendants have a high burden to meet on an insufficiency of the evidence claim: we affirm the conviction "unless the evidence, viewed in the light most favorable to the government, could not have persuaded any trier of fact of the defendant's guilt beyond a reasonable doubt." *United States v. Hernández,* 218 F.3d 58, 64 (1st Cir. 2000) (quoting *United States v. Paradis,* 802 F.2d 553, 559 (1st Cir. 1986)). The defendants fail to meet this burden.

To prove a prohibited purpose in violation of § 1382, the government must prove that the defendants deliberately entered or remained in the prohibited area without authorization, and that they knew or had notice, actual or constructive, that the entry was prohibited. *United States v. Sued-Jiménez,* 275 F.3d 1, 6 (1st Cir. 2001); *Maxwell,* 254 F.3d at 24 (explaining that "an unauthorized entry itself can constitute a prohibited purpose" under § 1382; the only state of mind required is a purpose to enter with actual or constructive notice that entry is prohibited). And, because the regulation establishing the danger zone states that "[i]t will be open to navigation at all times except

when firing is being conducted," 33 C.F.R. § 334.1470(b)(1), to prove a violation of § 1382, the government was required to prove that notice was given that the danger zone was closed to the public at the time of arrest. *United States v. Ayala Ayala,* No. 01-2148, slip op. at 13 (1st Cir. 2002). The Zenóns argue that the government did not prove either of these elements.

First, the Zenóns argue that the government did not establish that they entered the prohibited area. They say the government failed to show that either they or South Salinas Bay were within the danger zone outlined in the regulation. Their premise is that the government must "locat[e] defendants within the longitudes, latitudes and degrees specified in the regulation allegedly violated," a burden not met here. The argument overstates the government's burden.

The government provided ample evidence that the defendants were in South Salinas Bay, and that South Salinas Bay was within the danger zone. As to the defendants' location, Sergeant Luis Martinez, one of the FURA officers who intercepted the defendants, testified that he found them in South Salinas Bay, and that his supervisors had earlier informed him that the bay was part of a danger zone. He also testified that he recognized them as "Mr. Zenon, the father, and ... the son" from seeing pictures of them in newspapers. Another FURA officer, Wilfredo Padilla Sepulveda, who intercepted the defendants, testified that he found the defendants "inside the restricted zone" in South Salinas Bay.

As to the bay being in the danger zone, Cossairt testified that on the morning of October 4, 2001, she saw two civilian boats in South Salinas Bay from her observation

point. She pointed out this location on an aerial photograph, which depicted the danger zone. Schedules Officer Ramon DeJesus, who supervises the processing of airspace and surface area requests and is responsible for the creation of fishermen's warnings, also testified that South Salinas Bay is within "Danger Area B," depicted on the map attached to the fishermen's warning for the week of October 1 to October 7, 2001. In addition, the court took judicial notice of 33 C.F.R. § 334.1470, which outlines the danger zone in question in this case.

Second, the Zenóns say that they did not know or have notice of the fact that South Salinas Bay was a prohibited area on October 4, 2001, in the sense that the Navy did not alert people to the use of the area for military exercises, and therefore, that it was closed to navigation. In addition to contesting the facts concerning notice, the Zenóns raise one issue of law, which we discuss later, as to the timing of the prior notice required. The government counters that the Zenóns had both constructive and actual notice that entry into South Salinas Bay was prohibited. The evidence supports the government.

Officer DeJesus testified that he is responsible for the creation and dissemination of a weekly fishermen's warning, which includes, in Spanish and in English, notice of "what areas are to be used [for military exercises] and what areas are off-limits for non-participants." Such a notice is created and distributed each Wednesday, and includes information about what military exercises, if any, are scheduled for that week. The warnings are regularly sent to, and posted in, nine locations around Vieques and on mainland Puerto Rico. DeJesus testified that a routine weekly fishermen's notice was sent out on Wednesday, September 26, to all the usual locations. A copy of the

warning, in evidence, included information about the military exercises for the week of October 1 to October 7. The notice stated that there would be "dangerous naval activities" in "Danger Area B" from 8:00 a.m. until 11:00 p.m. on October 4. The attached map indicated where Danger Area B was, and South Salinas Bay is within it. Taking the evidence most favorably to the verdict permits the conclusion that the warning was actually posted as part of a regular weekly practice. The fishermen's warning constituted constructive notice to the Zenóns that military exercises were going to take place in South Salinas Bay on October 4, 2001.

In addition, the Zenóns also had actual notice that their presence in South Salinas Bay, on October 4, was not allowed. Sergeant Martinez informed the Zenóns in their boats that they were in a "restricted area" and that they were not allowed to be there. Officer Sepulveda also said that the FURA officers "informed one of them that they could not be there, that this was a restricted zone." Nevertheless, the Zenóns remained.

The defendants claim that because the FURA officers told them that they were in a "restricted area" and not a "danger zone" the notice was insufficient. Specifically, they say that because the fishermen's warning referred to a "danger area," they did not know that they were not allowed in the "restricted area." The Zenóns attempt to rely on the separate definitions given to a "danger zone"

and to a "restricted area" in 33 C.F.R. § 334.2,[4] but their argument is to no avail. Whatever the differences, they are not material in this case. The defendants knew from the FURA officers' warnings that they were not allowed in the area, no matter what the officers called that area.

Because the government presented sufficient evidence to show both that South Salinas Bay was a prohibited area, and that the Zenóns knew or had notice that it was a prohibited area, the district court did not err in denying the Rule 29 motion, and the defendants' insufficiency of the evidence claim fails.

C. Timing of Notice

The defendants say that the time period for adequate notice is governed by 33 C.F.R. § 334.3(c), which requires two weeks' advance notice, and here the fishermen's notice was posted only nine days before October 4, 2001. Section 334.3(c) is simply inapplicable in this case. It only applies to situations in which the military's expected use of the water area is sufficiently short and infrequent that "formal

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[4] 33 C.F.R. § 334.2 reads:

(a) *Danger zone.* A defined water area (or areas) used for target practice, bombing, rocket firing or other especially hazardous operations, normally for the armed forces. The danger zones may be closed to the public on a full-time or intermittent basis, as stated in the regulations.

(b) *Restricted area.* A defined water area for the purpose of prohibiting or limiting public access to the area. Restricted areas generally provide security for Government property and/or protection to the public from the risks of damage or injury arising from the Government's use of that area.

33 C.F.R. § 334.2 (2001).

regulations are not required" and in which a danger zone or restricted area has not been promulgated. 33 C.F.R. § 334.3(c) (2001); *see also United States v. de Jesus,* 108 F.Supp.2d 68, 71 (D.P.R. 2000). Here a danger zone was promulgated. Two weeks' notice in this case was unnecessary, and the notice which was provided was sufficient.

D. Validity of 33 C.F.R. § 334.1470

The defendants argue that the indictment should have been dismissed because 33 C.F.R. § 334.1470 was improperly promulgated under 33 U.S.C. § 1, and that it should have been promulgated under 33 U.S.C. § 3, which requires that the regulation will not "unreasonably ... interfere with or restrict the food fishing industry." 33 U.S.C. § 3 (1994). Because they raised this issue before the district court in their motion to dismiss the indictment, the Zenóns argue that the district court was obligated to hold an evidentiary hearing on whether the regulation unreasonably interfered with the food fishing industry.

The defendants rely on *United States v. Saade,* 652 F.2d 1126 (1st Cir. 1981). *Saade* held that the appropriate statutory authority for an almost identical regulation to § 334.1470 was 33 U.S.C. § 3 and not 33 U.S.C. § 1, because § 3 refers more specifically to the promulgation of regulations for the prevention of injuries from target practice. *Id.* at 1130-32. *Saade* remanded the case to the district court to hold an evidentiary hearing to determine whether the regulation unreasonably interfered with the food fishing industry. *Id.* at 1133-34. The defendants urge us to do the same here.

In our view, this case is not identical to *Saade.* The regulatory context has changed significantly. In 1993, a

new provision, explicitly promulgated under 33 U.S.C. § 3, was added to the danger zone and restricted area regulations. *See* Danger Zone and Restricted Area Regulations, 58 Fed. Reg. 37,606, 37,606 (July 12, 1993). This added provision states:

> The authority to prescribe danger zone and restricted area regulations must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. Whenever the proposed establishment of a danger zone or restricted area may affect fishing operations, the District Engineer will consult with the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior and the Regional Director, National Marine Fisheries Service, National Oceanic & Atmospheric Administration (NOAA).

33 C.F.R. § 334.3(b) (2001). Although the danger zone regulation in this case was promulgated under 33 U.S.C. § 1, both regulations are found in part 334 of title 33 of the Code of Federal Regulations, which deals with danger zones and restricted areas. 33 C.F.R. § 334.3(b) applies to 33 C.F.R. § 334.1470, and so the two must be read together, thus satisfying the concern in 33 U.S.C. § 3. *Saade* seems to have been satisfied by the addition of 33 C.F.R. § 334.3(b). To the extent that the defendants rely on *Saade*, their reliance is misplaced.

Beyond that, at the district court level the defendants made this argument about the effect on the food fishing industry in only one sentence of their motion to dismiss the indictment. In a nine-page motion they said only that "the Danger Zone in question was improperly promulgated pursuant to 33 U.S.C. § 1, and not 33 U.S.C. § 3 . . . and . . . the *regulation unreasonably affects the food fishing*

industry in Vieques and Puerto Rico." In response, the district court said that the defendants did not properly raise the argument because they provided no legal or factual support for it. We agree. For example, the defendants do not anywhere make the argument that the government did not here follow the notification procedure outlined in 33 C.F.R. § 334.3(b). An argument made offhand in one sentence of a motion is not sufficient to preserve an issue. *See United States v. Zannino,* 895 F.2d 1, 17 (1st Cir. 1990) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived."). The defendants did not adequately raise this issue before the district court, and have therefore forfeited the argument on appeal. *United States v. Slade,* 980 F.2d 27, 30 (1st Cir. 1992) ("It is a bedrock rule that when a party has not presented an argument to the district court, she may not unveil it in the court of appeals.").

III.

The judgment of the district court is *affirmed.*

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 02-1208

UNITED STATES,
Appellee,

v.

YABUREIBO ZENON ENCARNACION,
Defendant, Appellant.

JUDGMENT

Entered: April 29, 2002

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By The Court:

Richard Cushing Donovan, Clerk

By: Janice M. O'Neil
Chief Deputy Clerk

[cc: Messrs. Arraiza-Navas & Hughes]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 02-1207

UNITED STATES,
Appellee,

v.

CARLOS ZENON RODRIGUEZ,
Defendant, Appellant.

JUDGMENT

Entered: April 29, 2002

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By The Court:

Richard Cushing Donovan, Clerk

By: Janice M. O'Neil
Chief Deputy Clerk

[cc: Messrs. Arraiza-Navas & Hughes]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 02-1207, 02-1208

UNITED STATES

Appellee

v.

CARLOS ZENON
YABUREIBO ZENON ENCARNACION

Defendant-Appellants

ORDER OF COURT

Before: Selya, Circuit Judge;
Stahl, Senior Circuit Judge;
Lynch, Circuit Judge.
Entered April 23, 2002

Upon consideration of motion of appellants to file a "Post Oral Argument Brief",

It is ordered that the said motion be denied.

By The Court:

Richard Cushing Donovan, Clerk

By: Janice M. O'Neil
Chief Deputy Clerk

cc: Jorge E. Vega-Pacheco, Esq.
Michael F. Hughes
Fermin L. Arraiza Navas, Esq.
Harry Anduze-Montano
Gregorio Lima, Esq.
Jose Juan Nazario de la Rosa, Esq.

UNITED STATES COURT OF APPEALS
For The First Circuit

No. 02-1207

UNITED STATES,

Appellee,

v.

CARLOS ZENON,

Defendant, Appellant.

No. 02-1208

UNITED STATES,

Appellee,

v.

YABUREIBO ZENON ENCARNACION,

Defendant, Appellant.

ORDER OF COURT

Entered: March 14, 2002

Upon reconsideration, the court allows appellants' motion to expedite oral argument in this matter; argument shall be set for Thursday, April 4, in Boston.

So ordered.

By The Court:

Richard Cushing Donovan, Clerk

By: Janice M. O'Neil
Chief Deputy Clerk

cc: Messrs. Vega-Pacheco, Arraiza Navas, Anduze-Montano, Lima, Nazario de la Rosa

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United States Court of Appeals
For the First Circuit

No. 02-1207

UNITED STATES,

Appellee,

v.

CARLOS ZENON,

Defendant, Appellant.

No. 02-1208

UNITED STATES,

Appellee,

v.

YABUREIBO ZENON ENCARNACION,

Defendant, Appellant.

ORDER OF COURT

Entered: March 11, 2002

Appellants' request for expedited appeal is allowed. Appellants' briefs shall be filed by Friday, March 15, 2002; the appellee's brief shall be filed by Friday, March 22, 2002. The request for expedited argument is denied without prejudice to reconsideration after the briefs have been submitted.

So ordered.

By the Court:

Richard Cushing Donovan, Clerk

By: JANICE M. O'NEIL
Chief Deputy Clerk

[cc: Mr. Vega-Pacheco, Mr. Arraiza-Navas, Mr. Anduze-Montano, Mr. Lima and Mr. Nazario de la Rose.]

UNITED STATES DISTRICT COURT

FOR THE	District of **PUERTO RICO**
UNITED STATES OF AMERICA	**JUDGMENT IN A CRIMINAL CASE (For a Petty Offense)**
V.	
CARLOS ZENON	CASE NUMBER: **CR. 01-693-014 (JAF)**
	FERMIN ARRAIZA, GREGORIO LIMA & JOSE J. NAZARIO, ESQS. Defendant's Attorney

THE DEFENDANT:

☐ **THE DEFENDANT** pleaded ☐ guilty
☐ nolo contendere to count(s) _____

X **THE DEFENDANT** was found guilty on count(s) ONE ON 11-15-02.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

Title & Section	Nature of Offense	Date Concluded	Count Number(s)
18:1382	ENTERING MILITARY/COAST GUARD PROPERTY/CAMP GARCIA NAVAL INSTALLATION, AND A RELATED DANGER ZONE.	10-04-01	ONE

The defendant is sentenced as provided in pages 2 through 3 of this judgment.

☐ **THE DEFENDANT** was found not guilty on _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec.
580-46-2103

Defendant's Date of Birth:
09-18-1936

Defendant's USM No: _____

Defendant's Residence Address:

BOX 665
BO. MONTE SANTO
VIEQUES, P.R. 00765

Defendant's Mailing Address:

-------SAME AS ABOVE-------

JANUARY 15TH, 2002
Date of Imposition of Judgment

/s/ [Illegible]
Signature of Judicial Officer

JOSE A. FUSTE, U.S. DISTRICT JUDGE
Name and Title of Judicial Officer

1/17/02
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 180 DAYS.

☐ The court makes the following recommendations to the Bureau of Prisons:

X The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED
STATES MARSHAL

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 3, Part B.

	Assessment	Fine	Restitution
TOTALS	$ 10.00	$	$

☐ The determination of restitution is deferred until ___. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
TOTALS	$_____	$_____	

☐ If applicable, restitution amount ordered pursuant to plea agreement $_____

☐ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 3, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

  ☐ the interest requirement is waived for the ☐ fine and/or ☐ restitution.

  ☐ the interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

---

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

UNITED STATES DISTRICT COURT

FOR THE District of PUERTO RICO

UNITED STATES OF AMERICA **V.** **YABUREIBO ZENON-ENCARNACION**	**JUDGMENT IN A CRIMINAL CASE** **(For a Petty Offense)** **CASE NUMBER:** **CR 01-693-02 (JAF)** **FERMIN ARRAIZA, GREGORIO LIMA & JOSE J. NAZARIO, ESQS.** **Defendant's Attorney**

THE DEFENDANT:

☐ **THE DEFENDANT** pleaded ☐ guilty

☐ nolo contendere to count(s) _____

X **THE DEFENDANT** was found guilty on count(s)

ONE ON 11-15-02.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Concluded	Count Number(s)
18:1382	ENTERING MILITARY/COAST GUARD PROPERTY/CAMP GARCIA NAVAL INSTALLATION, AND A RELATED DANGER ZONE.	10-04-01	TWO

The defendant is sentenced as provided in pages 2 through 3 of this judgment.

☐ **THE DEFENDANT** was found not guilty on

_____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec.
583-81-5920

Defendant's Date of Birth:
11-01-1980

Defendant's USM No: _____

Defendant's Residence Address:
BOX 665
BO. MONTE SANTO
VIEQUES, P.R. 00765

Defendant's Mailing Address:
--------SAME AS ABOVE--------

JANUARY 15TH, 2002
Date of Imposition of Judgment

/s/ [Illegible]
Signature of Judicial Officer

JOSE A. FUSTE, U.S. DISTRICT JUDGE
Name and Title of Judicial Officer

1/17/02
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 180 DAYS.

☐ The court makes the following recommendations to the Bureau of Prisons:

X The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ ☐ a.m. ☐ p.m. on _____
- ☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on _____
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 3, Part B.

	Assessment	Fine	Restitution
TOTALS	$10.00	$	$

☐ The determination of restitution is deferred until ____. An *Amended Judgment in a Criminal Case* (AO245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
TOTALS	$ _____	$ _____	

☐ If applicable, restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 3, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the

☐ fine and/or ☐ restitution.

☐ the interest requirement for the

☐ fine and/or ☐ restitution is modified as follows:

---

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

EXHIBIT 1

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Plaintiff, v. CARLOS ZENON, YABUREIBO ZENON ENCARNACION, Defendant.	INDICTMENT Criminal No. 01-693 (JAF) Violations: 32 CFR 770.35-770.40 Title 18, U.S.C. § 1382 (TWO COUNT) (Received Oct. 31, 2001)

THE GRAND JURY CHARGES:

COUNT ONE

On or about October 4, 2001 in the District of Puerto Rico and within the jurisdiction of this Court, that is, on Camp Garcia Naval Installation at Vieques, Puerto Rico, that is, on lands reserved for the exclusive jurisdiction of the United States, that is, a danger zone as described by 33 CFR, Section 334.1460,

CARLOS ZENON,

defendant, did knowingly and unlawfully go upon said Naval installation for any purpose prohibited by law or lawful regulation, that is, 32 CFR Section 770.35 through 770.40 and 33 CFR, Section 334.1460, without first having obtained permission from the Commanding Officer as

required by the aforesaid regulations. All in violation of Title 18, *United States Code*, Section 1382.

COUNT TWO

On or about October 4, 2001 in the District of Puerto Rico and within the jurisdiction of this Court, that is, on Camp Garcia Naval Installation at Vieques, Puerto Rico, that is, on lands reserved for the exclusive jurisdiction of the United States, that is, a danger zone as described by 33 CFR, Section 334.1460,

YABUREIBO ZENON ENCARNACION

defendant, did knowingly and unlawful go upon said Naval installation for any purpose prohibited by law or lawful regulation, that is, 32 CFR Section 770.35 through 770.40 and 33 CFR, Section 334.1460, without first having obtained permission from the Commanding Officer as required by the aforesaid regulations. All in violation of Title 18, *United States Code*, Section 1382.

TRUE BILL

/s/ Diana Kempel Chardon
FOREPERSON

GUILLERMO GIL
UNITED STATES ATTORNEY

/s/ Jorge E. Vega Pacheco
Chief, Criminal Division

Date: October 31, 2001

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,	*	
Plaintiff,	*	
v.	*	CRIMINAL NO. 01-693
CARLOS ZENON, YABUREIBO ZENON ENCARNACION	*	
Defendants.	*	

MOTION TO AMEND INDICTMENT

TO THE HONORABLE COURT:

COMES NOW, the United States of America, by and through the undersigned attorneys, and respectfully states and prays as follows:

1. Pursuant to Fed.R.Crim.P. 7(e), to amend Counts ONE and TWO in the Indictment to allege a violation of the danger zone as described by 33 CFR §334.1470, instead of §334.1460 as initially alleged.

WHEREFORE, the United States respectfully requests that the Court grant a correction of this [illegible] error.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 6th day of December, 2001.

GUILLERMO GIL
United States Attorney

Jorge Vega-Pacheco
Assistant U.S. Attorney
Chief, Criminal Division

/s/ F.J. Bustamante
Frank Bustamante
Special Assistant U.S. Attorney
Room 452, Federal Building
Carlos Chardón Street
Hato Rey, PR 00918
Tel 766-5656

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of December, 2001, a true and correct copy of the foregoing has been sent by fax to Mr. Fermin Arraiza-Navas, defense counsel.

/s/ F.J. Bustamante
Frank Bustamante
Special Assistant U.S. Attorney

UNITED STATES COURT OF APPEALS
For The First Circuit

No. 02-1207

UNITED STATES

Appellee

v.

CARLOS ZENON

Defendant-Appellant

No. 02-1208

UNITED STATES

Appellee

v.

YABUREIBO ZENON ENCARNACION

Defendant-Appellant

ORDER OF COURT

Entered: May 24, 2002

Before

Chief Judge Boudin, Torruella, Seyla, Lynch, and Lipez, Circuit Judges

The Panel of judges that rendered the decision in this case having voted to deny the petition for rehearing and the suggestion for the holding of a rehearing en banc having been carefully considered by the judges of the court

in regular active service and a majority of said judges not having voted to order that the appeal be heard or reheard by the court en banc,

It is ordered that the petition for rehearing and the suggestion for rehearing en banc be denied.

By The Court:

Richard Cushing Donovan, Clerk

By: Janice M. O'Neil
Chief Deputy Clerk

cc: Jorge E. Vega-Pacheco, Esq.
Michael F. Hughes
Fermin L. Arraiza Navas, Esq.
Harry Anduze-Montano
Gregorio Lima, Esq.
Jose Juan Nazario de la Rosa, Esq.